

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on April 3, 2003 at
9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)
Sen. Gerald Pease (D)

Staff Present: Valencia Lane, Legislative Branch
Cindy Peterson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 124, 4/1/2003
Executive Action: HB 578; HB 547; HB 195; HB 124

EXECUTIVE ACTION ON HB 578

Motion: SEN. DAN MCGEE moved HB 578 BE INDEFINITELY POSTPONED.

Discussion:

CHAIRMAN DUANE GRIMES stated that language had been stripped out of HB 2 by the Senate, so indefinitely postponing HB 578 would comply with what the Senate wants to do.

Vote: SEN. MCGEE's motion that HB 578 BE INDEFINITELY POSTPONED carried UNANIMOUSLY.

DRAFTING OF COMMITTEE BILL

PROVIDING FOR STATE ASSUMPTION OF DISTRICT COURTS

Motion: SEN. MCGEE moved the Senate Judiciary Committee authorize the drafting of a Committee bill which will revise the laws governing state assumption of district courts and revise certain district court expenses.

SEN. MCGEE informed the Committee that he and **Senators Wheat, O'Neil,** and **Mangan** have worked diligently on the issue of state assumption of district courts. **SEN. MCGEE** suggested the Senate Judiciary Committee move and approve a motion to have a Committee bill drafted to deal with HB 2 funding for the state assumption of district courts. This issue has been worked out between the Montana Association of Counties (MACO), as well as the Supreme Court, but they need a vehicle to implement HB 2. Therefore, he suggests the Committee authorize a Committee bill.

Ms. Valencia Lane stated the Committee bill will implement certain provisions of HB 2, and the title will be "Revising the laws governing state assumption of district courts and revising certain district court expenses." In addition, the bill will create a special revenue account to be utilized by the Supreme Court for the payment of accumulated vacation and sick leave for county employees.

SEN. MCGEE explained if the Committee adopts his motion, a hearing will then have to be noticed.

Vote: SEN. MCGEE's motion carried UNANIMOUSLY with **Senators Pease** and **Mangan** voting by proxy.

CHAIRMAN GRIMES stated that **Sen. Esp** wanted a placeholder committee bill request.

Ms. Lane explained to the Committee that the time deadline for requests for Committee bills for general bills has long since past. Now, the only thing a Committee can request are bills to implement provisions of HB 2. **Sen. Esp** is concerned there may be conflicts and, therefore, would like a second bill.

Motion: **SEN. McGEE** moved a placeholder Committee bill for HB 2.

Vote: **SEN. McGEE's** motion carried UNANIMOUSLY with **Senators Pease** and **Mangan** voting by proxy.

HEARING ON HB 124

Sponsor: Rep. Alan Olson, HD 8, Roundup.

Proponents: Harold Blattie, Montana Association of Counties
Jim Kembel, Montana Association of Chiefs
of Police, Montana Police
Protective Association
Jim Smith, Montana Sheriffs' and Peace Officers'
Association, Montana County
Attorneys' Association
Chuck Swysgood, Office of Budget
and Program Planning
Larry Fasbender, Deputy Director,
Department of Justice
Robert Throssell, Montana Magistrates' Association

Opponents: None.

Opening Statement by Sponsor:

Rep. Olson explained HB 124 will set up a funding mechanism to relieve the general fund and help fund the Montana Law Enforcement Academy. The bill will generate approximately \$2.2 million over the biennium which represents money which would not have to be spent out of the general fund to help fund the law enforcement academy. Course costs at the academy range from \$5,800 down to \$400. This bill will allow tuition costs paid by local law enforcement agencies for the basic course to remain at \$600. Funding for the bill will come from a \$10 surcharge assessed on criminal tickets in justice courts. State law requires Montana's law enforcement officers to be certified. The cost to local government without this bill would be almost cost prohibitive. Passage of this bill would take a strain off the general fund budget and would be an asset to local governments who have to provide training to law enforcement personnel.

Proponents' Testimony:

Harold Blattie, representing the **Montana Association of Counties (MACO)**, stated **Rep. Olson** outlined the issues very well. **Mr. Blattie** informed the Committee that MACO completely supports the bill.

Jim Kembel, representing the **Montana Association of Chiefs of Police**, and the **Montana Police Protective Association**, stated the Law Enforcement Academy is extremely important, and they support the bill.

Jim Smith, representing the **Montana Sheriffs' and Peace Officers' Association** and the **Montana County Attorneys' Association**, testified HB 124 is an important bill, obviously, from a cost standpoint. County offices cannot afford to provide their officers with the training required by statute without the assistance provided for in the past by the general fund and now, hopefully, by the surcharge on court fees. This assistance is absolutely essential to the economic well-being of the sheriffs' offices so they can fulfill their statutory obligations to provide this training. It is also in the best interest of county attorneys to have well-trained, well-qualified officers in uniform who can bring cases that can be easily prosecuted in court. **Mr. Smith** made a plea for the Committee to put the program back into the general fund if they could not see clear to assess the surcharge.

Chuck Swysgood, **Office of Budget and Program Planning**, supports this legislation. The Law Enforcement Academy was funded with general fund money prior to this session and because of the situation with declining revenues, **Mr. Swysgood** told the Department it had to come up with proposals if they had a program they wanted to keep. This is their proposal to help fund and operate the Law Enforcement Academy which is so vital to law enforcement across the state.

Larry Fasbender, **Deputy Director of the Department of Justice**, stated they are looking at alternative funding because of what occurred in the Special Session. This is a way to relieve the general fund of the \$2.2 million. This process has been used in other states and is a proven and accepted method to place law enforcement training under a special fund and relieve the general fund. **Mr. Fasbender** submitted a background and statistic sheet to the Committee as **EXHIBIT(jus71a01)**. **Mr. Fasbender** asked the Committee to note that right now local law enforcement pays \$600 in tuition and the rest of the fee is borne by the state general fund. Under this bill, that balance will be picked up from the surcharge on the courts of limited jurisdiction. **Mr. Fasbender**

urged the Committee to give the bill favorable consideration and hoped the Committee would see fit to relieve the general fund of the \$2.2 million.

Robert Throssell, representing the Montana Magistrates'

Association, stated while the Magistrates Association is not in general favor of surcharges, there are several bills this session that tie into HB 124 and, in support of those bills as well, he supports HB 124. HB 18 is the court technology surcharge bill and this bill is necessary so courts of limited jurisdiction have the technology ability to assess this type of surcharge and make the payments. Many courts of limited jurisdiction still do not have computers. In addition HB 478, the suspension of driver's license for failure to comply with sentences, also ties into the surcharge. **Mr. Throssell** asked that the bill stay in its present form and give the courts of limited jurisdiction the tools they need to assess not only fines and restitution, but this type of surcharge.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY thought the fiscal note looked quite current and assumed the fiscal note takes into account small claims courts.
are not included.

Rep. Olson assured **SEN. CROMLEY** his assumption was correct.

Upon a second question from **SEN. CROMLEY**, **Rep. Olson** admitted he did not know what the current filing fees are in justice court.

Mr. Fasbender stated the bill does not deal with filing fees but rather applies to convictions in the court.

SEN. MCGEE stated there is a bill raising the fee \$5 to fund information technology for the Supreme Court and, coupled with this \$10 surcharge, will raise the fee 300 or 400 percent. **SEN. MCGEE** is concerned the fees will be raised so high, no one will be able to afford to go to court.

Rep. Olson stated HB 124 only pertains to criminal cases and the people who put the strain on the system ought to be the ones to help pay for it.

SEN. JERRY O'NEIL stated presently local law enforcement agencies are paying \$600 and wondered if they would continue to pay this amount.

Rep. Olson replied without this bill and funding from the general fund, the amount will be go up to \$5,800.

SEN. O'NEIL asked if a person is picked up for speeding, would this \$10 be added to their tab.

Mr. Fasbender replied speeding tickets are exempt from surcharges; however, there is legislation currently going through the legislature that would allow those surcharges to be applied to speeding tickets.

SEN. O'NEIL asked if someone gets pulled for going eight miles over the speed limit and is allowed to pay the officer at the scene, if the \$10 would be added to the charged assessed at the scene.

Mr. Fasbender stated under current law it would not be. If the legislature currently before the legislature passes, then it would be added. Until that legislation passes, it would not be added to a speeding ticket.

SEN. GARY PERRY confirmed with the sponsor that Mussellshell County only sends two officers a year for training.

Rep. Olson expanded that Mussellshell County is a good training ground. Because of the low pay scale, deputies do not generally hang around for too long and generally move onto to larger counties with a higher pay scale.

From a management standpoint, **SEN. PERRY** asked if it would be better to pay those deputies more and send less to the academy.

Rep. Olson believed salary for locally elected officials is set in statute according to the class of county. Deputies salaries are then based on the salaries of the local elected officials.

SEN. PERRY wanted to know how many people go through the academy in one year.

Mr. Fasbender replied there are different courses offered by the Law Enforcement Academy. All the corrections officers for the State of Montana go through the law enforcement academy and the Department of Corrections is responsible for some of those costs. In order to be a law enforcement official in Montana, you have to go through the academy. That is a requirement of the Peace Officers's Standards and Training (POST) requirement in the law. There are approximately 200 officers trained a year in the basic program. This number fluctuates somewhat, but on average the number has increased over time.

CHAIRMAN GRIMES was trying to determine what is included in "courts of limited jurisdiction" and could not find a definition in code.

Mr. Fasbender explained "courts of limited jurisdiction" refers basically to justice of the peace courts, but also includes the municipal courts and any place there are cases being heard that relate to traffic violations, DUIs and a number of different types of lower crimes. Nothing will be assessed against civil cases that come before those courts.

Technically, **CHAIRMAN GRIMES** would feel more comfortable if they had some coordination language with other statutes that define various courts.

Mr. Fasbender feels this is a workable piece of legislation since "courts of limited jurisdiction" has been used in the past and has not created any problems.

SEN. McGEE asked **Mr. Swysgood** about the surcharge added for Supreme Court information technology and whether that is for district courts or if it includes courts of limited jurisdiction as well.

Mr. Swysgood was not sure the bill applied to courts of limited jurisdiction.

Upon the request of **CHAIRMAN GRIMES**, **Ms. Lane** responded the surcharge for court information technology is codified at 3-1-317 and applies to all courts of original jurisdiction and applies also to civil cases and applies to a defendant in criminal cases upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail.

(Tape : 1; Side : B)

In answering **CHAIRMAN GRIMES** question, **Mr. Swysgood** replied he believes the surcharge for information technology applies to every court.

SEN. MIKE WHEAT understood that if the bill does not pass, the counties will have to pay \$5,800 for each officer who attends the academy.

Mr. Fasbender clarified that the \$5,800 is the portion being paid by the state, with the \$600 being paid locally. Without this bill, the local law enforcement agencies will be responsible for paying the whole amount, which would be approximately \$6,400.

SEN. WHEAT calculated that 200 people a year going through the Law Enforcement Academy, it costs the state between \$500,000 and \$600,000. The fiscal note indicates the bill will raise a little under \$1.3 million every year. **SEN. WHEAT** wondered if the bill was designed to help fund the law enforcement academy as well as reimburse the counties.

Mr. Fasbender replied they do not reimburse the counties right now. Under law, they are required to have POST-certified officers which means they need to go through basic training at the academy. The charge goes to the counties that they have to pay \$600 tuition for everyone they send there, and then the state pays the other \$5,800. That is just for the basic training. New legislation would pay the entire general fund portion of operating the academy. In the biennium, it takes approximately \$2.2 million of general fund to run the academy. This amount includes the basic courses, as well as all the other courses they provide. Under HB 124, this funding will now come from the state special revenue account generated by the surcharge.

CHAIRMAN GRIMES asked why the House struck "or bail" on page 1, line 22.

Mr. Fasbender explained it is cleaner language and it was not necessary to have that language because it is based on convictions and any convictions, whether bail is posted or not, would still have a \$10 surcharge.

Closing by Sponsor:

Rep. Olson added by statute the Montana Law Enforcement Academy has to provide basic law enforcement, corrections and detention officer basic course, public safety communications basic course, reserve officer workshops, juvenile detention officer basic, and coroner basic. Some of the other classes that are offered are advanced coroner and various professional classes as needed. The Law Enforcement Academy trains deputy sheriffs, municipal police officers, and corrections officers. Much of the training is required in statute. HB 124 will take a \$2.2 million impact off the general fund budget. If law enforcement officers are going to be required by law to be trained, this is one way of funding those programs and take the burden off the general fund.

EXECUTIVE ACTION ON HB 124

Motion: SEN. McGEE moved HB 124 BE CONCURRED IN.

Discussion:

SEN. WHEAT supports the bill and feels the Law Enforcement Academy is very important in training officers. SEN. WHEAT hopes the same enthusiasm is shown when discussion is held about giving money to the courts to provide information technology for all the smaller courts that do not even have computers. It is just as important to fund our court system as it is to train our law enforcement officers.

Vote: SEN. McGEE's motion that HB 124 BE CONCURRED IN carried UNANIMOUSLY with Senators Pease and Mangan voting by proxy. SEN. WHEAT will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 546

Motion: SEN. McGEE moved TO RECONSIDER HB 546.

Vote: SEN. McGEE's motion TO RECONSIDER HB 546 carried UNANIMOUSLY, with Senators Pease and Mangan voting by proxy.

Motion: SEN. McGEE moved HB 546 BE CONCURRED IN.

Discussion:

SEN. McGEE could not recall why the bill was indefinitely postponed.

SEN. WHEAT recalled the reason the bill was indefinitely postponed was because it was felt it would substantially increase the prison time for a person who is not paying child support. He asked Rep. Pat Wagman, HD 26, Livingston, to explain the purpose of HB 546 and explain whether the bill will increase the potential for jail time for a person a person who fails to pay child support as provided by the bill.

Rep. Wagman feels the title of the bill is misleading since being amended by the House Judiciary Committee. Rep. Wagman explained there is a two-year term of imprisonment and an eight-year term of probation. The purpose of the bill is to get an leash on people who have not paid child support for the last 10 or 15 years and owe \$30,000 to \$40,000 in back pay. An amount that substantial could not be collected in two years.

SEN. CROMLEY recalled that **Rep. Parker** testified he could only recall one case of actual incarceration. The purpose is not to have the person in jail, but rather to have the person working and paying. This will give the state a longer period of time over which the state will have supervision of the person.

SEN. O'NEIL talked about probation and parole fees assessed to and individual once that person is placed on probation or paroled.

Rep. Wagman did not know the amount of those fees, but stated a person may never even be jailed, but simply placed on probation.

SEN. O'NEIL asked why it is better to be on probation rather than fall under the auspices of the laws governing payment of restitution.

Rep. Wagman originally presented the bill to House Judiciary with a ten-year maximum sentence for failure to pay child support. The attorneys on House Judiciary decided to change the bill to provide for two years incarceration and eight years of probation.

Rep. Wagman intended to provide for a maximum ten-year incarceration period and leave it up to the judge to decide what portion of that period should be served in jail. **Rep. Wagman** intended to get a leash on people who are self-employed and chose not to pay their child support.

SEN. WHEAT asked **Ms. Lane** whether she believes the title of the bill should be modified.

Ms. Lane explained the title should probably have been modified when the House amended the bill. **Ms. Lane** reminded the Committee that a bill can be challenged for a defective title only for two years.

Vote: **SEN. McGEE's** motion that **HB 546 BE CONCURRED IN** carried **UNANIMOUSLY**, with **Senators Pease** and **Mangan** voting by proxy. **SEN. CROMLEY** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 195

Motion: **SEN. WHEAT** moved **HB 195 BE RECONSIDERED**.

Vote: **SEN. WHEAT's** motion that **HB 195 BE RECONSIDERED** carried **UNANIMOUSLY**, with **Senators Pease** and **Mangan** voting by proxy.

Motion: **SEN. McGEE** moved **HB 195 BE CONCURRED IN**.

Discussion:

Ms. Brenda Nordland, Department of Justice, explained HB 195 will not conflict with SB 37 in terms of the substance of the two bills. There is a small difference in the upper-end penalty as the bill came out of the Senate, but the jail time is the same. There is a slight difference in the mechanism by which the ignition interlock would be placed on an offender following a driver's license suspension on a DUI or a .10, soon to be .08, alcohol concentration violation. As SB 37 left Senate Judiciary, these provisions were intact.

SEN. AUBYN CURTISS had notes indicating after the second or third offense, a person would not be able to participate in a rehab program, and she wondered if that concern had been taken care of.

Ms. Nordland believed that **SEN. CURTISS** was referring to page 2 of the bill, lines 2 through 5. The way the current law deals with probationary drivers' licenses, this section is the gateway to probationary licenses. This bill will provide that with a second or third offense, during the period of a license suspension, there can be no probationary driving privilege. This is part of the federal mandate for repeat offenders, and it is an intentional change to conform to federal regulations.

SEN. MCGEE wanted to know why the Committee is reconsidering this bill if most of the issues are addressed in SB 37. Specifically, he would like to know what it is in HB 195 that needs to go forward.

Dave Galt, Director of Montana Department of Transportation (DOT), wanted HB 195 reconsidered. **Mr. Galt** explained the DOT and Governor's office had three goals this session relating to DUI laws, and one of those goals was tougher laws for repeat offenders. SB 37 has run into difficulties in the House and now has serious problems. Frankly, they now have \$5.6 sitting in one basket. By taking this issue out of the scenario, the rest of the issues can be addressed. This will take the federal compliance issues off the table.

CHAIRMAN GRIMES stated he was hoping early on that SB 37 could be split into SB 37 and HB 195. At this point, he feels HB 195 should be passed.

SEN. CROMLEY remembered that part of the federal compliance is the strengthening the laws for multiple offenses and adopting .08.

Mr. Galt reminded **SEN. CROMLEY** there was a third part which dealt with open container and it does not look like that bill will leave House Judiciary.

SEN. PERRY pointed out that when the Committee worked on SB 37, they increased fines. He directed the Committee to look at page 6, line 23, and page 7, line 13, of HB 195, and to note the upper limits for these fines were increased by the Committee.

SEN. WHEAT commented that if the bill is not amended and is passed by the Committee and the Senate, the bill will go directly to the Governor for signature. He understands that is what **Mr. Galt** prefers because then it takes the issue of habitual offender, and the funding off the table.

(Tape : 2; Side : A)

SEN. McGEE agreed the bill needs to go forward as it is.

Ms. Lane explained if SB 37 comes back and goes into a Conference Committee, a coordination instruction may have to be included in SB 37.

CHAIRMAN GRIMES stated he believes HB 195 should be passed unamended.

Vote: **SEN. McGEE's** motion **HB 195 BE CONCURRED IN** carried **UNANIMOUSLY** with **Senators Pease** and **Mangan** voting by proxy. **CHAIRMAN GRIMES** will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: 10:59 A.M.

SEN. DUANE GRIMES, Chairman

CINDY PETERSON, Secretary

DG/CP

EXHIBIT (jus71aad)